

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DEBRA RENTZ and BILLIE  
RENTZ, as co-personal  
representatives of the ESTATE OF  
CHRISTOPHER L. RENTZ,  
et al.,

Plaintiffs,

and

WILLIAM RENTZ, in his  
individual capacity,

Plaintiff-Intervenor,

vs.

SPOKANE COUNTY, et al.,

Defendants.

No. CV-05-83-AAM

**ORDER GRANTING  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT,  
IN PART, *INTER ALIA***

**BEFORE THE COURT** are Defendants' Motion For Partial Summary Judgment (Ct. Rec. 47), Plaintiffs' Joint Motion To Amend Complaint (Ct. Rec. 66), and Plaintiffs' Joint Motion To Continue Trial (Ct. Rec. 63).

The motion for partial summary judgment was heard with oral argument on June 20, 2006. Julian E. St. Marie, Esq., argued on behalf of Plaintiffs and

1 Plaintiff-Intervenor.<sup>1</sup> Heather Yakely, Esq., argued on behalf of Defendants.  
2 The Joint Motion To Amend Complaint (Ct. Rec. 66) and the Joint Motion To  
3 Continue Trial (Ct. Rec. 63) were considered without oral argument.  
4

## 5 **I. BACKGROUND**

6 Christopher L. Rentz was being held as a pre-trial detainee in the Spokane  
7 County Jail when on October 2, 2004, he was murdered by two fellow pre-trial  
8 detainees.

9 Plaintiffs Debra Rentz and Billie Rentz, as co-personal representatives of the  
10 Estate of Christopher L. Rentz, seek recovery of damages under Washington's  
11 wrongful death and survival statutes for violation of the federal constitutional  
12 rights of Christopher L. Rentz (the "decedent").<sup>2</sup> Debra Rentz and William Rentz,  
13 parents of the decedent, and Billie Rentz and Thomas Gregg, siblings of the  
14 decedent, are designated beneficiaries under the wrongful death and survival  
15 statutes.

16 Debra Rentz, William Rentz, Billie Rentz, and Thomas Gregg, also seek  
17 recovery of damages for violation of their own federal constitutional rights for loss  
18 of association with their son and brother.

19 William Rentz also seeks recovery of damages based on common law claims  
20 of outrage and negligent infliction of emotional distress.

21 When they first filed their motion, defendants sought summary judgment on  
22 all of the wrongful death causes of action asserted pursuant to state law because of  
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24 <sup>1</sup> Unless otherwise specified, reference to "plaintiffs" herein includes both  
25 "Plaintiffs" and "Plaintiff-Intervenor."

26 <sup>2</sup> The State has an affirmative duty to protect when it incarcerates or  
27 involuntarily institutionalizes a person. *DeShaney v. Winnebago County*  
28 *Department of Social Services*, 489 U.S. 189, 199-200, 109 S.Ct. 998 (1989).

1 a lack of evidence that Debra Rentz, William Rentz, Billie Rentz and Thomas  
2 Gregg were financially dependent upon the decedent at the time of his death.  
3 Defendants also sought summary judgment on the Eighth Amendment cause of  
4 action asserted on behalf of decedent, due to the fact he was a pre-trial detainee and  
5 had not been convicted. In their response brief, the plaintiffs did not dispute that  
6 they were not financially dependent upon the decedent. They asserted, however,  
7 that this did not preclude recovery of damages for wrongful death under 42 U.S.C.  
8 §1983 which borrows Washington's wrongful death statutes.  
9 In their reply brief, the defendants asserted that not only is recovery precluded for  
10 the wrongful death cause of action brought pursuant to state law, but that it is also  
11 precluded under federal law. Furthermore, defendants asserted that Debra Rentz,  
12 William Rentz, Billie Rentz, and Thomas Gregg are precluded from recovery under  
13 federal law for loss of association with their son and brother.

14 Because the defendants' reply brief expanded the scope of the summary  
15 judgment sought by defendants, the court granted the plaintiffs leave to file a  
16 supplemental brief so that it would be fair and proper to consider the expanded  
17 scope of relief sought by defendants.

18 On the same date that defendants' reply brief was filed with the court (June  
19 6), plaintiffs filed their Joint Motion To Amend Complaint and Joint Motion To  
20 Continue Trial.

## 21 22 **II. JOINT MOTIONS TO AMEND COMPLAINT AND CONTINUE TRIAL**

23 Plaintiffs seek to add four individuals (Spokane County Jail Officers  
24 Grooms, Mason and Foo; Spokane County Jail Nurse Judith Erickson) and  
25 Spokane County Mental Health as defendants. According to plaintiffs, the  
26 involvement of these individuals in the placement of decedent in the same jail  
27 dormitory as the individuals who murdered him came to light during depositions  
28 which have been conducted, including one of Judith Erickson that was conducted

1 on April 25, 2006. Plaintiffs contend the trial should be continued because of the  
2 additional discovery that will need to be conducted with regard to the additional  
3 defendants.

4 The proposed amended complaint would drop the Eighth Amendment cause  
5 of action asserted on behalf of a decedent, a concession that recovery under the  
6 Eighth Amendment for failure to protect is not possible since the decedent was a  
7 pre-trial detainee and not a convict. *Graham v. Connor*, 490 U.S. 386, 393 & n. 6,  
8 109 S.Ct. 1865 (1989).

9 The defendants contend that adding the individual county defendants  
10 (Grooms, Mason, Foo and Erickson) is pointless because Spokane County has not  
11 alleged that any of its employees acted outside the scope and course of their  
12 employment with regard to the events surrounding the death of Christopher L.  
13 Rentz. It is not pointless. Plaintiffs propose to assert constitutional claims against  
14 these new defendants in their personal (“individual”) capacities, as well as their  
15 official (“representative”) capacities, seeking to hold them personally responsible  
16 for their alleged actions and/or omissions related to the death of the decedent. All  
17 of the named defendants in the current complaint are sued in both their  
18 “individual” and “representative” capacities. When a plaintiff names an official in  
19 his individual capacity, he is seeking “to impose personal liability upon a  
20 government official for actions he [or she] takes under color of state law.”  
21 *Kentucky v. Graham*, 473 U.S. 159, 165, 105 S.Ct. 3099 (1985). When a plaintiff  
22 names a government official in his official capacity, the plaintiff is seeking  
23 compensatory damages from the government body itself and this requires proof  
24 that an official policy or custom is the cause of the constitutional violation. *Id.* at  
25 165-66. Punitive damages are available only against individual defendants for  
26 actions taken under color of state law in their individual capacity. *Smith v. Wade*,  
27 461 U.S. 30, 56, 103 S.Ct. 1625 (1983).

28 Defendants contend proposed new defendant Spokane County Mental

1 Health is prejudiced because it does not know about the proposed amended  
2 complaint and has not had an opportunity to object.<sup>3</sup> Of course, Spokane County  
3 Mental Health does not have notice because it is not yet a named defendant. That  
4 does not, however, preclude the court from allowing it to be named as such. Once  
5 named and served with an amended complaint, it can assert appropriate defenses.

6 Defendants contend the plaintiffs' proposed amended complaint also has an  
7 improper purpose in that it seeks to circumvent the summary judgment sought by  
8 defendants. To the extent the proposed amended complaint alleges wrongful death  
9 causes of action under state law, those causes of action remain subject to summary  
10 judgment, as discussed *infra*, because there is no dispute that the parents and  
11 siblings of decedent were not financially dependent upon him at the time of his  
12 death. Furthermore, allowing an amended complaint which drops the Eighth  
13 Amendment cause of action effectively achieves the same result as the summary  
14 judgment sought by defendants with regard to that cause of action. The "Joint  
15 Motion To Amend Complaint" does not circumvent the summary judgment motion  
16 filed by defendants. Nor does it circumvent the expanded scope of summary  
17 judgment relief sought by defendants via their reply brief.

18 Defendants contend the proposed amended complaint sets forth new causes  
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21 <sup>3</sup> Paragraph 1.18 of the "proposed" amended complaint alleges:

22 Spokane County and Spokane County Jail's duty to  
23 provide for the health and safety of Christopher Rentz  
24 is non-delegable. However, to the extent Defendants  
25 attempt to place responsibility on Spokane Mental  
26 Health for any of the events, occurrences, acts and/or  
27 omissions, SPOKANE MENTAL HEALTH is named  
28 as a party by Plaintiffs, pursuant to Fed. R. Civ. P. 8(e)(2).  
SPOKANE MENTAL HEALTH is a non-profit  
Washington corporation.

1 of action. According to defendants, plaintiffs propose a new cause of action under  
2 42 U.S.C. §1988. §1988, however, is not a cause of action separate from §1983.  
3 §1988 provides remedies for §1983 violations, including “borrowing” of state law  
4 to effectuate a remedy, as discussed *infra*.

5 Defendants contend that plaintiffs have added causes of action on behalf of  
6 the decedent for loss of life and enjoyment of life, and deprivation of  
7 “constitutionally guaranteed bodily security and his right to life.” This additional  
8 language simply elaborates upon the Fourteenth Amendment substantive due  
9 process cause of action asserted on behalf of decedent as already set forth in the  
10 original complaint filed by plaintiffs, and the “Complaint in Intervention” filed by  
11 William Rentz.

12 Defendants contend the proposed amended complaint alleges a new cause of  
13 action for Billie Rentz for “loss of companionship and association” and a new  
14 cause of action for Thomas Gregg for “loss of consortium and association.” The  
15 original complaint filed by plaintiffs, however, is clear that Billie Rentz and  
16 Thomas Gregg are asserting causes of action for violation of their Fourteenth  
17 Amendment substantive due process rights.

18 It is true the original complaint filed by the plaintiffs and the “Complaint In  
19 Intervention” filed by William Rentz are not as clear about asserting wrongful  
20 death and survival actions for the benefit of decedent’s estate and the beneficiaries  
21 designated under Washington’s wrongful death and survival statutes. The  
22 proposed amended complaint makes that clear and in doing so, does not prejudice  
23 the defendants. Furthermore, defendants are not prejudiced since the court is also  
24 granting the plaintiffs’ “Joint Motion To Continue Trial.”

25 There being no bad faith or dilatory motive on the part of plaintiffs, and the  
26 defendants not suffering any prejudice, justice requires that plaintiffs be given  
27 leave to amend their complaints pursuant to Fed. R. Civ. P. 15(a). Plaintiffs’ “Joint  
28 Motion To Amend Complaint” (Ct. Rec. 66) is **GRANTED**. Plaintiffs’

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1 “Second Joint Amended Complaint” (Ct. Rec. 77) will hereby serve as the  
 2 complaint of record for all of the Plaintiffs, including Plaintiff-Intervenor. This  
 3 complaint shall be served upon the new defendants in accordance with the Federal  
 4 Rules of Civil Procedure.

5 Good cause appearing, Plaintiffs’ “Joint Motion To Continue Trial” (Ct.  
 6 Rec. 63), to which the Defendants have not registered any opposition, is  
 7 **GRANTED**. Plaintiffs appear to seek a new trial date sometime in 2007. Within  
 8 ten (10) days of the date of this order, counsel for the parties will serve and file  
 9 with the court a paper indicating dates of availability for trial in 2007.

### 11 **III. MOTION FOR PARTIAL SUMMARY JUDGMENT**

#### 12 **A. Wrongful Death and Survival Causes Of Action Under Washington** 13 **State Law**

14 At common law, no cause of action survived the death of an individual, nor  
 15 was there a right of recovery for wrongful death. The Washington State  
 16 Legislature has passed statutes governing wrongful death and survival actions in  
 17 certain circumstances. *Schumacher v. Williams*, 107 Wn. App. 793, 794, 28 P.3d  
 18 792 (2001).

19 Wrongful death actions in Washington are strictly statutory. RCW 4.20.010  
 20 creates a right of action by the personal representative when a person’s death is  
 21 caused by a wrongful act, neglect, or default of another. It provides:

22 When the death of a person is caused by the wrongful act,  
 23 neglect, or default of another, his personal representative  
 24 may maintain an action for damages against the person  
 25 causing the death; and although the death shall have been  
 26 caused under such circumstances as amount, in law, to a  
 27 felony.

28 Only certain persons, however, may benefit from the wrongful death action.  
 RCW 4.20.020 provides in relevant part:

Every such action shall be for the benefit of the wife, husband,  
 child or children, including stepchildren, of the person whose  
 death shall have been so caused. **If there be no wife or husband**

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1           **or such child or children, such action may be maintained for the**  
2           **benefit of the parents, sisters or brothers, who may be dependent**  
3           **upon the deceased person for support, and who are resident**  
4           **within the United States at the time of his death.**

(Emphasis added).

5           The statute establishes two tiers of beneficiaries on whose behalf a wrongful  
6           death action may be maintained. The first tier of beneficiaries includes the spouse  
7           and the children of the deceased. It is unnecessary for these beneficiaries to  
8           establish financial dependence on the deceased. The second tier, including parents  
9           and siblings of the deceased, may recover only if there are no first tier beneficiaries  
10          and only if the designated beneficiaries were dependent on the deceased for  
11          support. *Schumacher*, 107 Wn. App. at 795.

12          Washington's wrongful death statutes, RCW 4.20.010 and 4.20.020, create  
13          causes of action for specific surviving beneficiaries of the deceased. Wrongful  
14          death causes of action begin at the death of the decedent for the benefit of the  
15          persons named in the statute. Wrongful death statutes govern post-death damages  
16          of the deceased. *Otani v. Broudy*, 151 Wn.2d 750, 755, 92 P.3d 192 (2004).  
17          Elements of damages include loss of love, affection, care, service, companionship,  
18          society, training and consortium that decedent would have provided to the  
19          beneficiaries. *Chapple v. Granger*, 851 F.Supp. 1481, 1487 (E.D. Wash. 1994).<sup>4</sup>

20          Unlike the wrongful death statutes, Washington's survival statutes do not  
21          create new causes of action for statutorily named beneficiaries, but instead preserve  
22          causes of action that the decedent could have brought had he or she survived. The  
23          survival statutes preserve causes of action for injuries suffered prior to death. The

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25          <sup>4</sup> Under RCW 4.20.010, the personal representative of the decedent's estate  
26          may maintain an action for damages against the tortfeasors to recover the value of  
27          the pecuniary interest lost as a result of the wrongful death. Pecuniary loss  
28          includes not only the monetary contributions the decedent would have made to the  
                beneficiaries, but also intangible losses. *Chapple*, 851 F.Supp. at 1487.



purpose of awarding damages under the survival statutes, RCW 4.20.046 and RCW 4.20.060, is to remedy the common law anomaly which allowed tort victims to sue if they survived, but barred their claims if they died. *Otani*, 151 Wn.2d at 755.

The general survival statute, RCW 4.20.046(1), provides in relevant part:

All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter, whether such actions arise on contract or otherwise, and whether or not such actions would have survived at the common law or prior to the date of enactment of this section: PROVIDED, HOWEVER, That the personal representative shall only be entitled to recover damages for pain and suffering, anxiety, emotional distress, or humiliation personal to and suffered by a deceased **on behalf of those beneficiaries enumerated in RCW 4.20.020**, and such damages are recoverable regardless of whether or not the death was occasioned by the injury that is the basis for the action.

(Emphasis added).

The general survival statute preserves all causes of action that a decedent could have brought if he or she survived.

The special survival statute, RCW 4.20.060, provides:

No action for personal injury to any person occasioning death shall abate, nor shall such right of action determine, by reason of such death, if such person has a surviving spouse or child living, including stepchildren, or leaving no surviving spouse or such children, **if there is dependent upon the deceased for support and resident within the United States at the time of decedent's death, parents, sisters or brothers**; but such action may be prosecuted, or commenced and prosecuted, by the executor or administrator of the deceased, in favor of such surviving spouse, or in favor of the surviving spouse and such children, or if no surviving spouse, in favor of such child or children, or if no surviving spouse or such child or children, **then in favor of decedent's parents, sisters or brothers who may be dependent upon such person for support, and resident in the United States at the time of decedent's death.**

(Emphasis added).

The special survival statute is limited to personal injury causes of action that result in death. It does not create new causes of action, but preserves personal

1 injury causes of action the decedent could have brought had he or she survived.

2 Recovery under the general survival statute is for the benefit of, and passes  
3 through the decedent's estate. Recovery under the special survival statute is for the  
4 benefit of, and is distributed directly to, the statutory beneficiaries. *Otani*, 151 Wn.  
5 2d at 755-56 and n. 3.<sup>5</sup>

6 "Washington's four interrelated statutory causes of action for wrongful  
7 death and survival each require that parents be 'dependent for support' on a  
8 deceased adult child in order to recover." *Phillippides v. Bernard*, 151 Wn.2d 376,  
9 386, 88 P.3d 939 (2004).<sup>6</sup> Likewise, siblings must be "dependent for support" on a  
10 deceased sibling in order to recover.

11 Because the parents and siblings of decedent acknowledge they were not  
12 financially dependent upon him, defendants are entitled to summary judgment on  
13 any wrongful death and survival causes of action asserted under Washington state  
14 law.

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18 <sup>5</sup> Damages recoverable in a survival action include medical and hospital  
19 expenses, funeral expenses, property damage, and pain, suffering, and fear  
20 experienced by the decedent ("those damages recoverable in a garden variety tort  
21 action"). *Chapple*, 851 F.Supp. at 1486.

22 <sup>6</sup> See also 4.24.010 "Action For Injury Or Death Of Child," which provides  
23 in relevant part:

24 A mother or father, or both, who has regularly contributed  
25 to the support of his or her minor child, **and the mother or**  
26 **father, or both, of a child on whom either, or both, are**  
27 **dependent for support may maintain or join as a party**  
28 **an action as plaintiff for the injury or death of the child.**

(Emphasis added).

**B. Wrongful Death and Survival Causes Of Action Under 42 U.S.C. §1983**

Where §1983 does not provide suitable remedies for constitutional violations, the federal courts are instructed to turn to state law “so far as the same is not inconsistent with the Constitution and laws of the United States.” 42 U.S.C. §1988(a). In *Robertson v. Wegman*, 436 U.S. 584, 594, 98 S.Ct. 1991 (1978), the Supreme Court held that state law on survivorship of causes of action should control so long as that state law is not generally “inhospitable to survival of §1983 actions . . . [and] has no adverse effect on the policies underlying §1983.” The Supreme Court, however, has still not resolved the issue of whether wrongful death causes of action may be pursued under §1983. Nevertheless, “[c]onfronted with standing problems, federal courts have ‘borrowed’ the wrongful death remedy as well as the survival remedy from state statutes under the vehicle of 42 U.S.C. §1988, declining to apply state limitations on recovery if necessary to fairly compensate victims of constitutional deprivations and to deter police misconduct.” *Davis v. City of Ellensburg*, 651 F.Supp. 1248, 1253 (E.D. Wash. 1987), citing *Brazier v. Cherry*, 293 F.2d 401 (5<sup>th</sup> Cir. 1961), and *Bell v. City of Milwaukee*, 746 F.2d 1205, 1238 (7<sup>th</sup> Cir. 1984), among other cases.

In *Davis*, recovery was sought under §1983 for the alleged wrongful death of an individual at the hands of the Ellensburg police. Observing that §1983 is silent on the issues of survivability of a decedent’s constitutional claims, recovery for wrongful death and the appropriate measure of damages, the Honorable Justin L. Quackenbush looked to Washington’s wrongful death and survival statutes. 651 F.Supp. at 1255. The defendants argued that recovery for wrongful death was not possible because the decedent’s parents were not financially dependent upon the decedent as required under Washington’s wrongful death and survival statutes (RCW 4.20.020, RCW 4.20.060 and RCW 4.24.010). Judge Quackenbush disagreed:

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Washington's wrongful death statutes provide that an action shall be for the benefit of a spouse or child of a decedent, but if there is no spouse or child . . . the action may be maintained for the benefit of dependent parents. RCW 4.20.020. The action must be brought by a personal representative on behalf of these statutory beneficiaries, RCW 4.20.010, which has been done [in this case]. While recognizing that the statutes' dependency requirement "serves a double purpose in that its satisfaction establishes the necessary proof on the damage issue" [citation omitted], the underlying purposes of the state statute do not necessarily control and correspond to the purposes of §1983. "Regardless of the law applied in a particular case, it is clear that the ultimate rule adopted under §1983 be a federal rule responsive to the need which arises whenever a federal right is impaired." [Robertson v. Wegman, 436 U.S. 584, 588, 98 S.Ct. 1991(1978)]. The independent vitality of §1983 has been reaffirmed many times by the Supreme Court. Carey v. Piphus, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978).

These considerations lead the court to hold that the wrongful death action brought on behalf of the decedent's parents is not barred by the failure of plaintiffs to allege dependency, and that the limitations imposed by the statute are inconsistent with the purposes of §1983. The goals of deterrence, compensation and federal supremacy require that defendants' motion to dismiss, and for summary judgment, on the basis of lack of standing under the state wrongful death statute be denied.

*Id.* at 1257.

In the case at bar, defendants ask this court to overrule *Davis* because the "premier" case upon which it relied, *Bell v. City of Milwaukee*, 746 F.2d 1205 (7<sup>th</sup> Cir. 1984), has been overruled, and "there is no need for this Court to craft a remedy as Plaintiffs have some claim which survive[s] to carry out the public policies behind §1983."

The financial dependency requirement applies to both wrongful death and survival actions. It appears the defendants do not dispute the propriety of lifting that requirement for the purpose of allowing the survival action to proceed in the instant case to vindicate any violation of decedent's constitutional rights. This

1 court agrees that is appropriate and in furtherance of the goals of §1983.<sup>7</sup> Under  
2 Washington's general survival statute, decedent's estate is the beneficiary, while  
3 under the special survival statute, decedent's parents and siblings will be the  
4 beneficiaries.

5 Like a survival action, a wrongful death action also seeks to vindicate the  
6 federal constitutional rights of a decedent, although, as discussed above, it does so  
7 in a different manner. In *Davis*, Judge Quackenbush found the parents of the  
8 decedent had standing under Washington's wrongful death statutes to recover,  
9 through the personal representative of the decedent's estate, for their injuries  
10 arising out of the death of their son. This led him to pass on the question of  
11 whether the parents' own constitutional rights had been violated. In a footnote,  
12 Judge Quackenbush stated that because "the limitations in the state statutes are  
13 inapplicable in this case, it is not necessary to reach the constitutional issue" of  
14 whether the parents had causes of action in their own right for violation of a liberty  
15 interest in the companionship, care, custody and management of their child. 651  
16 F.Supp. at 1257, n.1.<sup>8</sup>

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19 <sup>7</sup> The decedent left no surviving spouse or child who could prosecute a  
20 survival action on his behalf without needing to meet the financial dependency  
21 requirement. "[I]t defies history to conclude that Congress purposely meant to  
22 assure the living freedom from . . . unconstitutional deprivations, but that, with like  
23 precision, it meant to withdraw the civil rights statutes against the peril of death."  
24 *Brazier*, 292 F.2d at 404-05, 408. "The inescapable conclusion is that there may be  
25 substantial deterrent effect to conduct that results in the injury of an individual but  
26 virtually no deterrent to conduct that kills the victim." *Davis*, 651 F.Supp. at 1256.

27 <sup>8</sup> It appears this was because the wrongful death remedy would make the  
28 parents "whole." Their loss of consortium would be reimbursed as an element of  
damages in the wrongful death action for vindication of their son's constitutional

1 In *Rhyne v. Henderson County*, 973 F.2d 386, 391 (5<sup>th</sup> Cir. 1992), the mother  
 2 of a pretrial detainee who committed suicide brought an action against the county  
 3 under §1983 and state law. The Fifth Circuit Court of Appeals held:

4 Under *Brazier* . . . Rhyne has standing to recover for her  
 5 own injuries arising out of the wrongful death of her son.  
 6 There is no dispute that Rhyne is within the class of people  
 7 entitled to recover under Texas law for the wrongful death  
 8 of a child. [Citation omitted]. [*Brazier* holds that] §1988  
 incorporates this wrongful death remedy into §1983, allowing  
 Rhyne to recover under §1983 for her own injuries **resulting  
 from the deprivation of her son's constitutional rights.**

9 (Emphasis added).

10 The county contended that Rhyne could not have standing unless she proved  
 11 that the county intended to deprive her of familial association with her son in  
 12 adopting those policies that led to her son's death. The Fifth Circuit's response  
 13 was:

14 We recognize the strength of the argument that, unlike  
 15 survival statutes, wrongful death statutes arguably create  
 16 new cause of actions and therefore ought not to be  
 17 incorporated by §1988. [Citations omitted].<sup>9</sup> **We also  
 18 acknowledge that allowing suit by the parent in her own  
 19 right is not an inevitable companion of a wrongful death  
 20 statute. At the same time, Texas wrongful death law  
 provides Rhyne with the right to recover for her son's  
 wrongful death and she can recover for injury to herself  
 caused by her son's death. To be more precise, our decisions  
 allow recovery by Rhyne for her injury caused by the state's  
 deprivation of her son's constitutionally secured liberty  
 interests.**

21 (Emphasis added). See also *Carringer v. Rodgers*, 331 F.3d 844, 850 (11<sup>th</sup> Cir.  
 22 2003), citing *Rhyne*, and finding that "where the spouse-murderer is precluded

23 \_\_\_\_\_  
 24 right and so it was unnecessary to have it reimbursed through an action for  
 25 vindication of their own constitutional rights.

26 <sup>9</sup> In *Davis*, Judge Quackenbush found the fact that RCW 4.20.010-020 and  
 27 4.24.010 created new and original causes of action was not preclusive of their  
 28 invocation as shown by the practice of many courts in "borrowing" the wrongful  
 death cause of action from state law. 651 F.Supp. at 1256.

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1 from recovery, Carringer, as parent, has standing to assert a §1983 claim for the  
 2 wrongful death of her son in violation of **his** constitutional rights”)(Emphasis  
 3 added).<sup>10</sup>

4 In *Robertson v. Hecksel*, 420 F.3d 1254 (11<sup>th</sup> Cir. 2005), the Eleventh Circuit  
 5 further elaborated upon the distinction between a parent seeking to vindicate his or  
 6 her own constitutional rights, as opposed to vindicating the constitutional rights of  
 7 his or her deceased child. In *Robertson*, the plaintiff’s adult son was killed by a  
 8 police officer during a traffic stop. As a result of his death, the plaintiff argued she  
 9 suffered a deprivation of her constitutionally protected liberty interest in a  
 10 continued relationship with her son. The Eleventh Circuit held she did not have  
 11 such a protected liberty interest and affirmed dismissal of her Fourteenth  
 12 Amendment substantive due process claim. *Id.* at 1255. In doing so, the circuit  
 13 explained why *Brazier* and *Carringer*, cited *supra*, were not relevant to the  
 14 plaintiff’s claim:

15 *Brazier* and *Carringer* were both instances where state  
 16 law was used to fill the gaps in federal law through  
 17 §1988's borrowing provision. [Plaintiff] would have us  
 18 also look to state law through §1988's borrowing  
 19 provision to decide her case. Her argument misses the  
 20 dispositive difference between *Brazier* and *Carringer*  
 21 and our case. In those cases, the plaintiffs were seeking  
 22 vindication of the **decedent's** rights under §1983. Here,  
 23 plaintiff alleges a violation of **her** rights. Regardless of  
 24 whose rights are being asserted, before §1983 and §1988  
 25 can come into play, the plaintiff must still establish the  
 26 existence of a federal right. Because [plaintiff] has failed  
 27 to establish a federal right, we never reach §1983, let  
 28 alone §1988 and state law.

22 *Id.* at 1261 (emphasis in text).

23 The Eleventh Circuit went on to add:

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 26 <sup>10</sup> The 11<sup>th</sup> Circuit was formed after splitting from the 5<sup>th</sup> Circuit, but still  
 27 considers 5<sup>th</sup> Circuit decisions rendered before October 1, 1981 (the date of the  
 28 split) as binding precedent. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11<sup>th</sup>  
 Cir. 1981). *Brazier* is one of those decisions.



1 The plaintiffs in *Brazier* and *Carringer* passed the first  
2 hurdle of bringing a §1983 suit— identifying a federal right—  
3 by relying on the rights of the decedent. [Citation omitted].  
4 In essence, they were bringing wrongful death suits under  
5 federal law. Although the survivors' claims were separate  
6 from the claims of the decedents' estates, the *Brazier* and  
7 *Carringer* plaintiffs' claims necessarily required a finding  
8 that the decedents' deaths were wrongful in some way.  
9 **Conversely, whether the decedent's rights in our case  
10 were violated has no bearing on the ability of his mother to  
11 argue a loss of companionship, because her alleged cause of  
12 action is based on a violation of rights personal to her, not  
13 rights personal to the defendant.** For that reason, *Brazier*  
14 and *Carringer* are not controlling.

15 *Id.* at 1261-62 (emphasis added).

16 In *Carringer*, the Eleventh Circuit indicated there were at least four different  
17 theories used by circuit courts to determine what claims after death may proceed  
18 under §1983. 331 F.3d at 850, n. 9. One theory, as espoused in *Brazier*, is that  
19 §1988 permits courts to “borrow” state wrongful death statutes to the extent they  
20 are consistent with §1983. Another theory followed by circuits is the  
21 “constitutional approach” which is to allow a claimant to argue that he had a  
22 relationship with the deceased that was constitutionally protected and that the  
23 homicide of the decedent destroyed that relationship and therefore, violated the  
24 claimant's own protected constitutional rights. *Bell* is an example of this  
25 “approach” (parent may assert constitutional claim for death of adult child, but  
26 siblings cannot sue under wrongful death theory), as is *Trujillo v. Bd. of County*  
27 *Comm.*, 768 F.2d 1186, 1189 (10<sup>th</sup> Cir. 1985)(recognizing constitutional claims by  
28 parents and siblings, but only when defendant intended to destroy constitutionally  
protected relationship). Yet another theory or approach is that a parent simply does  
not have a liberty interest in the companionship of an adult child. *Butera v.*  
*District of Columbia*, 235 F.3d 637, 656 (D.C. Cir. 2001). And yet another theory  
adopted by some circuits is to permit recovery of the damages for the harm done to  
the decedent, but not for the harm to the survivor, even though both are permitted  
under state law. *Andrews v. Neer*, 253 F.3d 1052, 1063-64 (8<sup>th</sup> Cir. 2001).

1 In *Davis*, Judge Quackenbush did not employ a “constitutional  
 2 approach” in determining that the parents of the decedent were entitled to recover  
 3 under Washington’s wrongful death statute. Judge Quackenbush cited *Bell* in  
 4 support of his decision, but only insofar as being an example of cases in which  
 5 federal courts had borrowed the wrongful death remedy from state statutes. Judge  
 6 Quackenbush did not cite *Bell* for its “constitutional approach.” At least in the  
 7 Ninth Circuit, however, the “constitutional approach” would warrant such  
 8 recovery, based in particular on decisions rendered after *Davis*. At the same time,  
 9 it would not warrant recovery for the siblings. See discussion *infra*. The  
 10 “constitutional approach” leads this court to conclude that recovery by decedent’s  
 11 parents under Washington’s wrongful death statutes is appropriate to further the  
 12 goals of §1983.<sup>11</sup>

### 13 14 **C. 42 U.S.C. §1983 Causes Of Action for Fourteenth Amendment** 15 **Violations Brought By Parents and Siblings**

#### 16 17 **1. Decedent’s Parents**

18 The Seventh Circuit Court of Appeals recently overturned *Bell* in *Russ v.*  
 19 *Watts*, 414 F.3d 783, 791 (7<sup>th</sup> Cir. 2005): “We therefore overrule our decision in  
 20 *Bell* insofar as it recognized a constitutional right to recover for the loss of  
 21 companionship of an adult child when that relationship is terminated as an  
 22 incidental result of state action.” It indicated the only circumstance in which a  
 23

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24 <sup>11</sup> Even if the “constitutional approach” were not employed, this court would  
 25 not allow decedents’ siblings to recover as statutory beneficiaries of a wrongful  
 26 death action, based on the rationale that the recovery by the parents as statutory  
 27 beneficiaries of a wrongful death action would be sufficient enough to serve the  
 28 goals of §1983, and that also allowing recovery by the siblings would not  
 appreciably enhance service of those goals.

1 constitutional right would arise is where there is intentional action by the state to  
2 purposefully interfere with a familial relationship. *Id.* at 790. “[F]inding a  
3 constitutional violation based on official actions that were not directed at the  
4 parent-child relationship would stretch the concept of due process far beyond the  
5 guiding principles set by the Supreme Court.” *Id.*

6 To date, however, the Ninth Circuit Court of Appeals is of a different mind.  
7 Defendants acknowledge they are asking this court, based on the decision of the  
8 Seventh Circuit in *Russ*, to hold contrary to Ninth Circuit precedent that parents of  
9 an adult child do not have a Fourteenth Amendment substantive due process right  
10 to the companionship of that child where deprivation of the right is incidental to  
11 the state action. In *Russ*, the Seventh Circuit noted:

12 Several of our sister circuits have considered whether the  
13 Constitution protects a parent’s relationship with his adult  
14 children in the context of state action which has the incidental  
15 effect of severing that relationship. No other court of which  
16 we are aware has allowed a parent to recover for the loss of  
17 his relationship with his child in these circumstances. Most  
18 courts that have considered the issue have expressly declined  
19 to find a violation of the familial liberty interest where the  
20 state action at issue was not aimed at specifically interfering  
21 with the relationship.

22 414 F.3d at 787.

23 The Seventh Circuit cited decisions from the First, Third, Fourth, Sixth and  
24 Tenth Circuits, but it did not cite any decisions from the Ninth Circuit in support of  
25 its overruling of *Bell*. Indeed, the Seventh Circuit pointed out that a Ninth Circuit  
26 decision, *Kelson v. City of Springfield*, 767 F.2d 651, 655 (9<sup>th</sup> Cir. 1985) , had held  
27 contrary to the other circuits in finding that parents had a constitutionally protected  
28 interest in the companionship of their 14 year old son, and stated a claim under  
§1983 against school officials after he committed suicide while at school. *Russ*,  
441 F.3d at 787-88. See also *Robertson*, 420 F.3d at 1258, n. 4, in which the  
Eleventh Circuit observed that “Ninth Circuit decisions have interpreted their case  
law as allowing a parent to bring a companionship claim in the context of an adult

1 child where the deprivation was incidental to the state action.”

2 The development of Ninth Circuit precedent that parents are entitled to bring  
3 a companionship claims in the context of an adult child where the deprivation was  
4 incidental to the state action has, to say the least, not come about directly and  
5 explicitly, nor has it been supported by any extensive and rigorous analysis.  
6 *Kelson* did not involve an adult child, but rather a minor child. Subsequently, in  
7 *Strandberg v. City of Helena*, 791 F.2d 744, 748 (9<sup>th</sup> Cir. 1986), the Ninth Circuit  
8 allowed the parents of a 22 year old who had hung himself in jail to proceed with a  
9 §1983 claim based on the Fourteenth Amendment for loss of companionship and  
10 society of their son. As the Eleventh Circuit observed in *Robertson*, however:

11 [I]t does not appear that *Strandberg* actually extended  
12 the holding of *Kelson* to include adult children. In  
13 *Strandberg*, the court’s action regarding the parents’  
14 claim of a due process violation was limited to correcting  
15 the parents’ incorrect belief that the district court had  
16 dismissed their claim. [Citation omitted]. Thus, the  
17 *Strandberg* court did not address whether the asserted  
18 right existed.

19 420 F.3d at 1258, n. 4, citing *Strandberg*, 791 F.2d at 748 & n. 1.

20 In *Curnow v. Ridgecrest Police, et al.*, 952 F.2d 321, 325 (9<sup>th</sup> Cir. 1991), the  
21 Ninth Circuit, with the undersigned sitting by designation and authoring the  
22 panel’s opinion, found a district court had not erred in refusing to dismiss a §1983  
23 action under the Fourteenth Amendment brought by parents seeking to recover for  
24 the loss of companionship and society of their adult child who had been shot and  
25 killed by police. *Kelson* and *Strandberg* were cited in support of that finding, as  
26 was *Smith v. City of Fontana*, 818 F.2d 1411, 1419 (9<sup>th</sup> Cir. 1987).

27 In *Smith*, children, including adult children, asserted a Fourteenth  
28 Amendment liberty interest in the companionship and society of their father who  
was killed by police. The Ninth Circuit noted that when a child claims  
constitutional protection for her relationship with a parent, no custodial interest is  
implicated, but only a companionship interest. In finding that this companionship

1 interest warranted constitutional protection, the court relied on *Strandberg*,  
 2 explaining that decision as follows:

3       The parents' interest in directing the upbringing  
 4       of their son was not implicated because the son  
 5       was twenty-two years old and no longer a minor;  
 6       the parents therefore "had not been deprived of  
 7       any constitutional *right to parent*. [791 F.2d] at  
 8       748 n.1 (emphasis added). However, the parents  
 9       were able to "claim a violation of their fourteenth  
 10       amendment due process rights in the companionship  
 11       and society of the decedent." [791 F.2d] at 748.  
 12       Thus, the familial relationship, and not the more  
 13       narrow custodial interest of the parents, gave rise  
 14       to the due process action. *See also Bell*, 746 F.2d  
 15       at 1245 (parent can assert personal due process  
 16       claim for death of adult child because the "Supreme  
 17       Court's decisions protect more than the custody  
 18       dimension of the parent-child relationship") . . . .

19 *Id.* at 1418.

20       Since *Curnow*, the Ninth Circuit has consistently recognized that its  
 21       precedent recognizes a Fourteenth Amendment liberty interest of parents in the  
 22       companionship and society of their adult children, even when the deprivation of  
 23       that interest is incidental to the state action. *Toguchi v. Chung*, 391 F.3d 1051,  
 24       1060 (9<sup>th</sup> Cir. 2004); *Lee v. City of Los Angeles*, 250 F.3d 668, 685-86 (9<sup>th</sup> Cir.  
 25       2001) (citing *Kelson*); *Moreland v. Las Vegas Metro Police Dept.*, 159 F.3d 365,  
 26       371 (9<sup>th</sup> Cir. 1998) (citing *Curnow*); *Byrd v. Guess*, 137 F.3d 1126, 1134 (9<sup>th</sup> Cir.  
 27       1998)(citing *Curnow*); and *Ward v. City of San Jose*, 967 F.2d 280, 283 (9<sup>th</sup> Cir.  
 28       1992).

29       In *Ward*, the Ninth Circuit acknowledged the Tenth Circuit's holding in  
 30       *Trujillo* that although a mother and sister had a constitutional liberty interest in the  
 31       companionship and society of the decedent, they needed to prove a wrongful intent  
 32       specifically directed at them before they were entitled to recover. The Ninth  
 33       Circuit, however, adopted what it labeled as the "earlier and better rule of *Bell*,"  
 34       refusing to impose *Trujillo*'s limitation requiring proof of specific intent to  
 35       interfere with the family relationship (i.e., parent-child relationship). The Ninth

1 Circuit indicated that *Bell* was consistent with its decision in *Smith*, and that neither  
2 *Bell* or *Smith* had imposed the limitation set forth in *Trujillo*. 967 F.2d at 283-84.

3  
4 The development of this precedent in the Ninth Circuit, even be it  
5 inadvertent and/or not particularly well thought out under Supreme Court  
6 precedent, is nonetheless binding authority upon this district court. As persuasive  
7 as the rationale and holding of the Seventh Circuit in *Russ* may be in overruling  
8 *Bell*, it is the Ninth Circuit, not this court, which must decide whether the Ninth  
9 Circuit will now follow *Russ*.

10 Based on current Ninth Circuit authority, Debra Rentz and William Rentz,  
11 are entitled to assert Fourteenth Amendment substantive due process causes of  
12 action seeking to vindicate their constitutional rights for loss of companionship  
13 with their adult son.

## 14 15 **2. Decedent's Siblings**

16 The Ninth Circuit has held that a sibling does not possess a constitutionally  
17 protected liberty interest in the companionship of another sibling. "Neither the  
18 legislative history nor Supreme Court precedent supports an interest for siblings  
19 consonant with that recognized for parents and children." *Ward*, 967 F.2d at 284,  
20 citing *Bell*, 746 F.2d at 1248. According to *Bell*:

21 [I]f we were to hold that the federal Constitution entitles  
22 the siblings to recover for loss of society and companion-  
23 ship, there could be no principled way of limiting such  
24 a holding to the immediate family or perhaps even to blood  
25 relationships. Obviously many human relationships stem  
from the "emotional attachments that derive from the  
intimacy of daily association," but we are unwilling to  
attach constitutional significance to such attachments out-  
side the closely guarded parent-child relationship.

26 746 F.2d at 1247.

27 Billie Rentz and Thomas Gregg cannot, in their individual capacities,  
28 proceed on Fourteenth Amendment substantive due process causes of action



1 because they have no constitutionally protected liberty interest in the  
2 companionship of their brother.

3  
4 **D. Conclusion**

5 Defendants' Motion For Partial Summary Judgment (Ct. Rec. 47) is  
6 **GRANTED IN PART** and **DENIED IN PART** as follows:

7 (1) Summary judgment is **GRANTED** to defendants on any wrongful death  
8 and survival causes of action brought under Washington State law because there is  
9 no dispute that the parents and siblings of the decedent were not financially  
10 dependent on the decedent at the time of his death, such dependency being a  
11 requirement of Washington State law.<sup>12</sup>

12 (2) Summary judgment is **GRANTED** to defendants on the wrongful death  
13 causes of action brought under 42 U.S.C. §1983 for the benefit of Billie Rentz and  
14 Thomas Gregg.

15 Summary judgment is **DENIED** as to the wrongful death causes of action  
16 brought under 42 U.S.C. §1983 for the benefit of Debra Rentz and William Rentz.

17 Debra Rentz and Billie Rentz, as co-personal representatives of the Estate  
18 of Christopher L. Rentz, are entitled to proceed with survival causes of action  
19 under §1983, borrowing Washington's survival statutes.

20 (3) Summary judgment is **DENIED** as to the Fourteenth Amendment  
21 substantive due process causes of action asserted by Debra Rentz and William  
22 Rentz to vindicate their own constitutional rights to society and companionship of  
23 their adult son.

24 \_\_\_\_\_  
25 <sup>12</sup> William Rentz has individually asserted common law causes of action for  
26 outrage and negligent infliction of emotional distress, but those are distinct from  
27 the wrongful death cause of action. These common law causes of action are  
28 premised on a duty owed by defendants to William Rentz, not a duty owed by  
defendants to the decedent.



1 (4) Summary judgment is **GRANTED** to defendants on the Fourteenth  
2 Amendment substantive due process causes of action asserted by Billie Rentz and  
3 Thomas Gregg because they do not have constitutional rights to companionship  
4 and society of their brother.

5 **IT IS SO ORDERED.** The District Executive is directed to enter this order  
6 and forward copies to counsel of record.

7 **DATED** this 27<sup>th</sup> of June, 2006.

8  
9 s/ Alan A. McDonald  
10 ALAN A. McDONALD  
11 Senior United States District Judge  
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